No. 85-1973

Supreme Court, U.S.
FILED
NOV 20 1986
JOSEPH F. SPANIOL, JR.
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

RICHARD POPE and CHARLES G. MORRISON,
Petitioners,

—v.—

PEOPLE OF THE STATE OF ILLINOIS,
Respondent.

ON WRIT OF CERTIORARI TO THE
APPELLATE COURT OF ILLINOIS, SECOND DISTRICT

BRIEF OF AMERICAN BOOKSELLERS ASSOCIATION, INC., ASSOCIATION OF AMERICAN PUBLISHERS, INC., COUNCIL FOR PERIODICAL DISTRIBUTORS ASSOCIATIONS, INTERNATIONAL PERIODICAL DISTRIBUTORS ASSOCIATION, INC., NATIONAL ASSOCIATION OF COLLEGE STORES, INC. AND THE FREEDOM TO READ FOUNDATION, AS *AMICI CURIAE*, IN SUPPORT OF PETITIONERS.

Of Counsel:
R. BRUCE RICH
LINDA STEINMAN
WEIL, GOTSHAL
& MANGES

ROGER L. FUNK
GREENBERG, GLUSKER,
FIELDS, CLAMAN
& MACHTINGER

MAXWELL J. LILLIENSTEIN
RICH, LILLIENSTEIN,
KRINSLY, DORMAN &
HOCHHAUSER, P.C.

MICHAEL A. BAMBERGER*
DAVID C. BURGER
FINLEY, KUMBLE, WAGNER,
HEINE, UNDERBERG, MANLEY,
MYERSON & CASEY
425 Park Avenue
New York, New York 10022
(212) 371-5900
Counsel for *Amici Curiae*

*Counsel of Record

TABLE OF CONTENTS

	Page
Table of Authorities	ii
Statement	1
The *Amici*	1
Interest of the *Amici* and Summary of Argument	2
Argument -	
Access to Works Generally Acknowledged as Having Serious Literary, Artistic, Scientific or Political Value Will be Unconstitutionally Restricted if the Third Prong of the *Miller* Test is Tied to Local Community Standards	5
Conclusion	14

TABLE OF AUTHORITIES

	Page
Cases:	
American Council of the Blind v. Boorstein, No. 85-3836 (D.D.C. Sept. 23, 1986)	4, 11
Attorney General v. Book Named "God's Little Acre", 326 Mass. 281, 93 N.E.2d 819 (1950)	8
Bose Corp. v. Consumers Union of the United States, Inc., 466 U.S. 485 (1984)	1
Castle News Co. v. Cahill, 461 F. Supp. 174 (E.D. Wisc. 1978)	6
Council for Periodical Distributors Ass'n v. Evans, 642 F. Supp. 552 (M.D. Ala. 1986)	3
Jenkins v. Georgia, 418 U.S. 153 (1974)	13
Memoirs v. Massachusetts, 383 U.S. 413 (1966)	7
Miller v. California, 413 U.S. 15 (1973)	*passim*
Paris Adult Theatre I v. Slaton, 413 U.S. 49 (1973)	6
Penthouse Int'l v. McAuliffe, 610 F.2d 1353 (5th Cir. 1980)	6
Playboy Enterprises, Inc. v. Meese, Nos. 86-1346, 86-1447 (D.D.C. July 2, 1986); 13 Med. L. Rptr. 1101	3
Smith v. United States, 431 U.S. 291 (1977)	6, 12

	Page
United States v. Bagnell, 679 F.2d 826 (11th Cir. 1982)	6
United States v. Heyman, 562 F.2d 316 (4th Cir. 1977)	6
United States v. Two Obscene Books, 99 F. Supp. 760 (N.D. Calif. 1951), *aff'd sub nom. Besig v. United States*, 208 F.2d 142 (9th Cir. 1953)	8
United States v. Ulysses, 72 F.2d 705 (2d Cir. 1934)	8
Other Authorities:	
Attorney General's Commission on Pornography, *Final Report* (July 1986)	3
A. Haight & C. Grannis, *Banned Books, 387 B.C. to 1978 A.D.* (4th ed. 1978)	8
R. Unger, *Knowledge and Politics* (1984)	9

STATEMENT

The American Booksellers Association, Inc.; the Association of American Publishers, Inc.; the Council for Periodical Distributors Associations; the International Periodical Distributors Association, Inc.; the National Association of College Stores, Inc.; and The Freedom to Read Foundation (collectively referred to as "*Amici*") submit this joint brief *amici curiae*, pursuant to Rule 36 of the Rules of the Supreme Court of the United States, in support of petitioners. This joint brief is submitted upon the written consent of petitioners and respondent.[1]

THE *AMICI*

The *amici*'s members publish, distribute, sell and lend books, magazines, and other printed materials having serious literary, artistic, scientific and political value. These materials span a broad range of subjects and a variety of tastes, and include works that some might find controversial or offensive. The very diversity of these works speaks compellingly of the vital role performed by *amici*'s members in preserving "the freedom to speak one's mind . . . [which] is essential to the common quest for truth and the vitality of society as a whole." *Bose Corp. v. Consumers Union of the United States, Inc.*, 466 U.S. 485, 503 (1984).

The American Booksellers Association, Inc. is the major national association of booksellers in the United States. It has approximately 5,200 members consisting of independent, department store, university and chain book stores.

The Association of American Publishers, Inc. is the major national association in the United States of publishers of general books, textbooks and educational materials. Its approximately three hundred members include most of the major commercial book publishers in the United States and many smaller or nonprofit publishers, including university presses and scholarly associations.

---

[1] The original of petitioners' written consent by Glenn A. Stanko and the original of respondent's written consent by Mark L. Rotert are being filed herewith.

The Council for Periodical Distributors Associations is the national trade association for over five hundred independent local wholesale distributors of magazines, comic books, paperback books and newspapers in every state of the United States.

The International Periodical Distributors Association, Inc. is the trade association for the principal national periodical distributors engaged in the business of distributing or arranging for the distribution of paperback books and periodicals to wholesalers throughout the United States for ultimate distribution to retailers and the public.

The National Association of College Stores, Inc. is a trade association composed of approximately 2,300 college stores located throughout the United States.

The Freedom to Read Foundation, a non-profit organization supported by voluntary donations, was established in 1969 by the American Library Association to promote and defend First Amendment rights; to foster libraries as institutions wherein every citizen's First Amendment freedoms are fulfilled; to support the right of libraries to include in their collections and make available any work which they may legally acquire; and to set legal precedent for the freedom to read on behalf of all citizens.

INTEREST OF THE *AMICI* AND SUMMARY OF THE ARGUMENT

Recent history has seen a burgeoning number of unconstitutional attempts to restrict access to First Amendment protected materials. While the attacks have taken a variety of forms and have not always been directed at the sexual content of publications, sexually-frank expression has been particularly besieged by those who would conform the nation's reading tastes and habits to their own parochial standards. Such attacks run contrary to our great constitutional tradition, which eschews conditioning speech either upon what a narrow segment of the community may view as acceptable or what majoritarian forces would dictate.

To cite but a few troubling recent examples, in Alabama, the District Attorney of the City of Montgomery embarked on an unlawful campaign to coerce bookstore and newstand owners from carrying *any future* issues of periodicals which he deemed objectionable, but were adjudged to be protected by the First Amendment.[2] At the national level, the Attorney General's Commission on Pornography ("Commission") branded convenience and drug store chains as purveyors of pornography, leading to a court order requiring the retraction of the charge and advice to the recipients that earlier communications from the Commission were of no legal effect and to be ignored.[3] In its subsequent July 1986 report, the Commission not only endorsed broad new law enforcement initiatives but also encouraged "private" censorship efforts as a "coercive force" to "control" the availability of materials concededly protected by the First Amendment.[4]

These and other similar unlawful efforts to restrict the availability of non-obscene, First Amendment protected materials were not directed at adult book stores or hard-core movie theaters. The targets of these efforts have been legitimate bookstores, newsstands, convenience stores and drug stores. These legitimate businesses, and the publishers and distributors that supply them, are the members represented by the *amici* trade associations.

The nation's libraries, whose interests are represented here by The Freedom To Read Foundation, have been subject to similar censorship pressures as those experienced by legitimate publishers, distributors and retailers. Public libraries — even the Library of Congress — have felt the sharp sting of censorship directed

---

[2] *Council for Periodical Distributors Ass'n v. Evans*, 642 F. Supp. 552 (M.D. Ala. 1986)

[3] *Playboy Enterprises, Inc. v. Meese*, Nos. 86-1346, 86-1447 (D.D.C. July 2, 1986); 13 Med. L. Rptr. 1101.

[4] Attorney General's Commission on Pornography, *Final Report*, at pp. 419-23 (July 1986).

at works involving sexual expression.[5] Libraries, as publicly-funded institutions, are especially vulnerable to such pressures.

This rising agitation, directed against legitimate businesses and libraries handling First Amendment protected materials, makes particularly critical the signal to be given by this Court through its decision in this case. From early in the nation's history, it has been the celebrated mission of those who publish, distribute and lend printed materials to foster and disseminate the wide array of ideas that is the hallmark of a free society. Promoting the free exchange of ideas is undoubtedly the greatest service publishers, booksellers, librarians and their distributors can render. The effective fulfillment of that role requires an atmosphere of tolerance that rejects the imposition of moral, aesthetic, or political views of any one group upon individuals of opposing belief and allows for unorthodox and unpopular expression alongside the conventional.

In fending off attacks on works viewed by over-zealous prosecutors or community activists as objectionable, *amici*'s members have fundamentally relied upon the critical protections afforded by *Miller*. Specifically, the third prong of *Miller*, as consistently interpreted prior to the lower court's ruling in the instant case, has served to check parochial censorship efforts directed against works generally acknowledged to be of serious literary, artistic, political or scientific value. Because the third prong of the obscenity test has not been restricted to community standards, it establishes an objective bulwark — a safety net — defining the fundamental First Amendment limitation on a community's authority arbitrarily to restrict expression.

Were the Court to affirm the ruling below, the detrimental effects on *amici*'s members would be substantial. Moving from a standard which transcends parochial values to community-based standards of value would allow prevailing local sentiment to

---

[5] *See, e.g., American Council of the Blind v. Boorstein*, No. 85-3836 (D.D.C. Sept. 23, 1986) (striking order of Librarian of Congress, responding to Congressional budget-cutting, to terminate Braille edition of *Playboy*).

dictate what publishers, distributors, booksellers and librarians shall offer to all.

Literature cannot thrive when it must be leveled to appeal to local tastes. The efforts of *amici*'s members to promote the free exchange of ideas envisioned by the First Amendment require a climate of toleration of diversity. This Court's affirmation that the third prong of the *Miller* standard transcends community sentiments as to value will help protect and nurture that climate.

ARGUMENT

ACCESS TO WORKS GENERALLY ACKNOWLEDGED AS HAVING SERIOUS LITERARY, ARTISTIC, SCIENTIFIC OR POLITICAL VALUE WILL BE UNCONSTITUTIONALLY RESTRICTED IF THE THIRD PRONG OF THE *MILLER* TEST IS TIED TO LOCAL COMMUNITY STANDARDS

(I)

Under the obscenity test enunciated in *Miller v. California*, 413 U.S. 15 (1973), legitimate publishers, booksellers and libraries have functioned confident in the knowledge that the obscenity laws do not apply to any work that has serious literary, artistic, scientific or political value. The *Miller* test, as heretofore uniformly applied, provides communities with adequate means to control materials that, taken as a whole, appeal to the prurient interest and depict sexual conduct in an offensive manner as judged by the standards of those communities, while at the same time providing a safeguard against parochial restrictions on works having serious literary, artistic, scientific or political value. The *Miller* test safeguards works having serious value by mandating that they be adjudged by a standard *not* restricted by the prevailing tastes of each particular community across the nation. In this fashion, the *Miller* test resolves the tensions between the community's desire to set the tone of community living and the constitutional imperative for unimpeded access to works having serious literary, artistic, scientific or political value.

Any break with this precedent will eviscerate the meaning of the First Amendment as a *federal* constitutional right, and force legitimate publishers and booksellers to conform to a multitude of value standards varying from community to community. Such a patchwork of parochial standards unrestrained by any objective safeguard for works of serious value would force publishers, booksellers and libraries to self-censor works that might be deemed "valueless" under the local standard of some community. It is impractical for a publisher to create numerous editions of its works tailored to a multitude of community value systems. The result of publishing for the lowest common denominator of community-determined value would be the loss of many works whose ideas "lift the spirit, improve the mind [and] enrich the human personality." *Paris Adult Theatre I v. Slaton*, 413 U.S. 49, 63 (1973).

This Court and the three federal courts of appeals to reach the issue have unanimously concluded that, under *Miller*, serious literary, artistic, political or scientific value is to be adjudged by a standard that is not limited to any particular community's sentiment. Thus, in *Smith v. United States*, 431 U.S. 291, 302 (1977), the Court observed that "[l]iterary, artistic, political, or scientific value . . . is not discussed in *Miller* in terms of contemporary community standards." *See United States v. Bagnell*, 679 F.2d 826, 835 (11th Cir. 1982) ("In applying the third part of the *Miller* test . . . the trier of fact is not supposed to rely upon contemporary community standards when evaluating the evidence"); *Penthouse Int'l v. McAuliffe*, 610 F.2d 1353, 1363 (5th Cir. 1980) ("Contemporary community standards are not applied in the third prong of the *Miller* test"); *United States v. Heyman*, 562 F.2d 316, 318 (4th Cir. 1977) ("Nowhere does [*Miller*] suggest that the scientific value of sexually oriented expression is to be judged on such a parochial basis"). *See also*, *Castle News Co. v. Cahill*, 461 F. Supp. 174, 179 (E.D. Wisc. 1978) ("[I]n applying the third prong, an objective standard must be used, *i.e.*, a standard that would remain constant in every corner of the United States").

These rulings are faithful to both the language and spirit of *Miller*, and represent the safeguard necessary to protect works having serious value from being banned because they offend parochial

sensibilities. The third prong of the *Miller* test creates a "safety net" that prevents prevailing local sensibilities from being the final arbiters of the scope of First Amendment protections.

The Court previously has rejected formulations of the obscenity test that would allow community fiats on offensiveness and prurient appeal to override the consideration of serious value:

> "Each of the three federal constitutional criteria is to be applied independently; the social value of the book can neither be weighed against nor canceled by its prurient appeal or patent offensiveness."

Memoirs v. Massachusetts, 383 U.S. 413, 419-20 (1966).

The evaluation of serious literary, artistic, political or scientific value thus establishes the ultimate common denominator of obscenity standards applied in every community throughout the nation. Considerations of prurient appeal and patent offensiveness obviously vary from urban to rural areas, and from region to region. The first two prongs of the *Miller* test recognize this obvious variation in local sensibilities. However, application of the *Miller* test has not exalted local peculiarities over serious literary, artistic, scientific or political value. The third prong reaches for more objective standards of merit that are susceptible of detached and reasoned analysis. The *Miller* test, as heretofore uniformly applied, insures that serious value remains a distinct and potent counterforce against the shifting tide of community sentiment.

A determination of value which is based on contemporary community standards is entirely too susceptible of collapsing into a question of *approval*. A definition of value based on contemporary community standards is likely to be only an extension of community sentiment that a work is prurient and offensive; value, after all, is an easy half-step away from taste. If the individual is to have an expansive choice of ideas — to receive expression of widely regarded value perhaps not currently appreciated by his community — *a priori* the community cannot be the definer of value.

Experience has demonstrated the myopia which can afflict purely community-based determinations of obscenity. Judging serious literary value, for example, on the basis of local community standards would revisit the pre-*Memoirs* period when individual communities banned as obscene such recognized works of serious literature as James Joyce's *Ulysses*, Erskine Caldwell's *God's Little Acre* and Henry Miller's *Tropic of Cancer* and *Tropic of Capricorn*. *See United States v. Ulysses*, 72 F.2d 705 (2d Cir. 1934); *Attorney General v. Book Named "God's Little Acre"*, 326 Mass. 281, 93 N.E.2d 819 (1950); *United States v. Two Obscene Books*, 99 F. Supp. 760 (N.D. Calif. 1951), *aff'd sub nom. Besig v. United States*, 208 F.2d 142 (9th Cir. 1953). *See also* A. Haight & C. Grannis, *Banned Books, 387 B.C. to 1978 A.D.*, (4th ed. 1978) (includes books banned by various governmental agencies).

In contrast to that era of erratic and unpredictable suppression of literature, the third prong of the *Miller* test has effectively defined the ultimate reach of First Amendment protection and thus circumscribes the authority of communities to control what their citizens may and may not read. In *Miller*, this Court confirmed that the scope of First Amendment protection is not wholly subsumed within local community standards:

> "Under a national Constitution, fundamental First Amendment limitations on the powers of the States *do not vary from community to community*, but this does not mean that there are, or should or can be, fixed, uniform national standards of precisely what appeals to the 'prurient interest' or is 'patently offensive.' " (emphasis added)

Miller, 413 U.S. at 30.[6]

---

[6] Even from the perspective of fostering community, the scope of First Amendment protection should not be wholly subsumed within local community standards. Communities unquestionably require a certain commonness of belief in order that the group become a "community," as that word signifies in its fullest sense. That common bond can be fostered by a variety of acceptable means, for example by persuasion. However, "strong community" does not require

(Footnote Continued)

If serious literary, artistic, scientific and political value were to be adjudged by local community standards, then fundamental First Amendment limitations *would* vary from community to community. No principle is more central to the First Amendment than the preservation of ideas, however unpopular or controversial. A broad-based standard is necessary to insure that, uniformly across the nation, no works of serious value which contribute to the exposition of ideas are denied constitutional protection.

(II)

Failure to maintain a uniform boundary against encroachments on First Amendment protections would have a serious impact on the publishing and library communities. Faced with the prospect of obscenity prosecutions based entirely on the prevailing parochial tastes in each individual community, businessmen and librarians would have only one rational response: self-censorship regardless of objective literary, artistic, scientific or political value. The effect would be both local and national in scope.

Without an objectively based standard for judging serious value, national publishers, distributors and retailers of widely circulated works would effectively be constrained from handling any work that might be deemed "valueless" by the prevailing opinion of some individual community. The practical impossibility of restricting the distribution of works according to varying local community standards would produce a "national" standard defined by the most restrictive communities.

Publishers, booksellers and librarians have operated on the understanding that obscenity laws cannot be invoked so long as a work, analyzed in a detached and reasoned manner, is recognized as having serious literary, artistic, scientific or political value.

---

excluding all ideas offensive to community leaders. As political philosophers supportive of "community" have recognized, that invites stagnation of thought, not community. *See* R. Unger, *Knowledge and Politics* 286-88 (1984). Thus, while the *Miller* test properly takes into account the varying views of different communities on questions of prurience and offensiveness, no community should be allowed to exclude ideas widely recognized as valuable outside of that group — for those ideas present the continuous challenge that keeps community views vital.

Thus, a librarian, bookseller or college store is not required to censor controversial works of serious value that many, or even most, local residents may find to be "valueless." This is the essence of the protection of the First Amendment.

If literary, artistic, scientific and political value were to be defined by local community sentiment, then the ultimate scope of First Amendment protection would constantly be in flux and often unpredictable. So long as there is an objective safeguard for works having serious value, it is of relatively little moment that community standards for prurient appeal and patent offensiveness are fluid. If, however, all three prongs of the obscenity test were to be judged by those fluid community standards, then publishers, booksellers and librarians would have no fixed guidepost defining the limits of First Amendment protection. The *amici's* members will err on the side of over-restrictiveness rather than risk criminal prosecution.

Defining obscenity solely in terms of community standards would allow and perhaps even encourage local activist groups, assertedly representing "prevailing" community sensibilities, to coerce the censorship of bookstore stocks and library collections. College stores routinely stock required reading texts that might well be considered "valueless" and offensive in the surrounding local communities, although those works are elsewhere recognized as having serious literary value. No unwilling member of the local community is forced to read these "valueless" works. Local residents therefore should not be able to impose their sensibilities to restrict access to works that are objectively recognized as having serious literary, artistic, scientific or political value.

(III)

Publicly funded libraries, which constitute an irreplaceable resource giving substance to the First Amendment rights of all citizens, are also particularly subject to coercion by those local residents who would censor what their neighbors may read. Libraries are extremely vulnerable to pressures exerted during

the budgetary process at every level of government.[7] Given this institutional fragility, it requires little imagination to recognize that local disputes over the acquisition of controversial works having serious value could easily result in severe pressures on library funding and management. Judging all three prongs of the *Miller* test in accordance with community standards would so muddy the obscenity test that local activists would be emboldened to challenge a library's acquisition of any work locally deemed to be controversial regardless of the work's generally accepted serious value. The filing of a single obscenity action — civil or criminal — against a library would irreparably chill that library's future collection development. As a matter of community relations, no public library can afford to defend against an obscenity action.

Moreover, librarians — who are public employees — have no economic incentive, and in fact have a strong economic disincentive, to purchase and make available works of serious value that vocal residents nonetheless view as being beyond the pale of First Amendment protections. Librarians accordingly look to the safe harbor provided by an objective evaluation of serious artistic, literary, scientific and political value.

Judging all three elements of the obscenity test by unpredictable local standards varying over time and from community to community would also raise insuperable administrative barriers to interlibrary loans. The emergence of the Information Age means that no single library, not even a great one, can aspire to serve as the complete record-keeper of our civilization. It is through library consortia and bibliographic networks that today's libraries provide the nation with the intellectual resources it requires. These networks and consortia often represent libraries in diverse communities, both urban and rural, and generally interstate as well as

---

[7] *See, e.g., American Council of the Blind v. Boorstein*, No. 85-3836 (D.D.C. Sept. 23, 1986) (striking order of Librarian of Congress, responding to Congressional budget-cutting, to terminate Braille edition of *Playboy*).

intrastate.[8] Thus, a consortium library in New York City which sends materials to an institution in Hartford, Connecticut or Dover, Delaware must be able to rely on a nonparochial evaluation of the serious value of any work it provides. The alternative would require the sending library to implement a number of expensive procedures, including obtaining a legal opinion from the receiving institution on the status of any requested work arguably subject to prosecution. The cost of such steps would have a disastrous impact on the development of cooperative library services.

(IV)

The role of the third *Miller* prong as a safety net preventing parochial sensibilities from overriding the determination of serious literary, artistic, scientific and political value is reflected in the appellate review of obscenity rulings. Broader appellate review has uniformly been accorded to findings under the third element of *Miller*. This Court has thus stated that findings as to serious value are "particularly amenable to appellate review." *Smith v. United States*, 431 U.S. 291, 305 (1977). This greater judicial scrutiny recognizes that the standard for determining serious value is one of the "fundamental First Amendment limitations . . . [that] do not vary from community to community." *Miller*, 413 U.S. at 30.

Whether a particular work has prurient appeal or is patently offensive in some isolated community is a question of fact reasonably reviewable on appeal only to the extent of determining whether the work could, as a matter of law, ever have prurient appeal or be patently offensive. No appellate court, removed from the relevant community, can be a better judge of a particular community's standards than the jury and trial judge drawn from that

---

[8] Interstate multitype library networks have been organized throughout the nation to meet current demands for library services. For example, the New England Library and Information Network (NELINET) serves Connecticut, Maine, Massachusetts, New Hampshire and Vermont. The Southeastern Library Network (SOLINET) serves Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee and Virginia.

community. Findings under the first two *Miller* prongs therefore are subject only to the most limited appellate scrutiny.

In *Jenkins v. Georgia*, 418 U.S. 153 (1974), for example, the Court held that the film "Carnal Knowledge" "could not, as a matter of constitutional law, be found to depict sexual conduct in a patently offensive way, and that it is therefore not outside the protection of the First and Fourteenth Amendments because it is obscene." 418 U.S. at 161. In essence, the Court ruled that there was no question of fact established for the jury's determination and therefore the jury's finding of patent offensiveness could be overturned.

Even if the level of appellate review applied in *Jenkins* may ultimately protect those parties convicted of obscenity crimes that appear before this Court, the decision in *Jenkins* could not realistically prevent self-censorship by publishers, booksellers and libraries if all three prongs of the obscenity test were to be adjudged by local community standards. The fact that prurient appeal and patent offensiveness are determined by local community standards has not constrained the legitimate publishing industry because the third prong of the *Miller* test protects *any* work having serious value, *even if* a jury panel believes that the work appeals to the prurient interest and is patently offensive in that particular community. So long as serious value is not adjudged by local community standards, the very narrow appellate review accorded to findings of prurient appeal and patent offensiveness will continue to have little practical effect on the publication and distribution of legitimate works having serious value. This is as it should be – an obscenity test should not impinge on access to works generally recognized as having serious value.

Redefining serious value in terms of local community standards would permit obscenity convictions to evade meaningful appellate review. A jury that has found a work to have prurient appeal and to be patently offensive is likely to simply extend that sentiment to find that the work has no serious value *in that community*. Each individual community across the nation in each obscenity prosecution would newly reinvent the definition of serious literary,

artistic, scientific and political value, and would newly redefine the scope of the First Amendment. What is generally acknowledged to be a work of serious value throughout the nation could nonetheless be banned as obscene by some individual community. Framing the obscenity test entirely in terms of local community standards would eliminate the third prong as an objective safeguard of fundamental First Amendment protections and ultimately prescribe what a person may read solely by the prevailing views of a majority of his neighbors.

CONCLUSION

For the reasons set forth above, we respectfully urge this Court to uphold the precedent that serious literary, artistic, scientific and political value is determined without reference to local community standards, and to reverse the order of the Appellate Court of Illinois, Second District.

Respectfully submitted,

MICHAEL A. BAMBERGER*
DAVID C. BURGER
FINLEY, KUMBLE, WAGNER, HEINE, UNDERBERG, MANLEY, MYERSON & CASEY
425 Park Avenue
New York, New York 10022
(212) 371-5900

Counsel for *Amici Curiae* American Booksellers Association, Inc., Association of American Publishers, Inc., Council for Periodical Distributors Associations, International Periodical Distributors Association, Inc., National Association of College Stores, Inc. and The Freedom to Read Foundation

* *Counsel of Record*

Of Counsel:

R. BRUCE RICH
LINDA STEINMAN
WEIL, GOTSHAL & MANGES
767 Fifth Avenue
New York, New York 10153
Attorneys for Association of American Publishers, Inc. and International Periodical Distributors Ass'n, Inc.

ROGER L. FUNK
GREENBERG, GLUSKER, FIELDS, CLAMAN & MACHTINGER
1900 Avenue of the Stars
Los Angeles, California 90067
Attorney for The Freedom To Read Foundation

MAXWELL J. LILLIENSTEIN
RICH, LILLIENSTEIN, KRINSLY, DORMAN & HOCHHAUSER, P.C.
99 Park Avenue
New York, New York 10016
Attorney for American Booksellers Ass'n., Inc.